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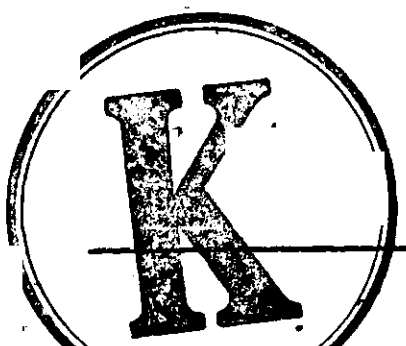
File No. Apl. G.P.H.C./41



Legal **DEPARTMENT**

C **BRANCH**

K.S.R. ~~Subject:~~

2615.

Appointments and leave of the Govt. Pleader High Court Bombay and his assistants

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To

The Secretary to Government Legal Department,
& Remembrancer of Legal Affairs,
Secretariat,
Bombay.

Re:- Application for post of Hon.Asstt.
to Govt. Pleader, High Court, Bombay.

Sir,

When I applied for the post of an Hon.Assistant to the Government Pleader High Court, Bombay, the Leader of our Bar, the Learned Government Pleader was kind enough to bring to my notice Rule 47 of

"The Rules for the conduct of Legal Affairs". This Rule (47) prescribes the age limit for the post in question. This caused me much anxiety, and created a strong persuasion in me to ascertain the exact position and legal effect of the said Rule, with a view to find out how far it was likely to affect the decision of my application.

Upon purchasing a copy of the brochure containing the said Rule, which Brochure is styled as "Law Officers (Conditions of Service" Rules AND "Rules for the conduct of Legal Affairs", and having gone g through it carefully I noticed that the preface of the brochure which is signed by the then Remembrancer of Legal Affairs, in its last paragraph, classified these two sets of Rules, and clearly distinguishes their respective legal effect and value. The first set (a), the preface describes as "Statutory", and second Set (b) as "Governing procedure". This distinction is made by the Government - and hence by law.

Now, Rule (47) prescribing the age limits falls in the 2nd set, i.e. Non-statutory. Hence, I submit, that this Rule could be relaxed in a proper case; and, very respectfully, I further submit that mine might be found to to be a fit and proper case for the relaxation of the said Rule(47), when the other points are looked into --- regarding personal experience of the conduct of cases,

the

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22/5/56.

the quantity of work, the variety of the nature of work, and the opinions regarding my work and experience expressed by the eminent counsels of the High Court, and also by the Learned Government Pleader.

With Respects.

Sir,

Bombay,
24th July 1941.

I have the honour to remain,
Your most obedient servant,

Sd. A.G.Kotval

Encls- 2 pages showing the title of the Brochure and the preface referred to in the above letter.

Id.A.G.K.

Submitted through the Government Pleader, High Court, Bombay, with a request for necessary endorsement, and a request to forward this to the Secy.Leg.Deptt.

Id. A.G.K.
24-7-41

No. 1688.

Office of the Government Pleader, High Court.
Bombay, 24th July 1941.

Forwarded with compliments to the Remembrancer of Legal Affairs, Bombay.

2. I am of opinion that the rule regarding the age limit may be relaxed in favour of all the candidates that are over 27.

Sd. R.A.Jahagirdar

Government Pleader, High Court.

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23/5/56.

6531 36-P
24/7 28/7

Submitted.

2. Letter from Mr.A.G.Kotval, stating that when he wanted to apply for the post of Hon.Assistant, the Govt.Pleader High Court, brought to his notice rule 47 of the L.C.Rs. which prescribes the age limit. Mr. Kotval states that upon reading that rule a great anxiety was created in him and to find out how far it affected his appointment, he purchased a copy of the Law Officers (Conditions of Service) Rules and "Rules for the Conduct of Legal Affairs of Govt.". He adds that the first w set of rules is described as "statutory" and second set of rules as "Governing procedure" which distinction has been made by Government. He then goes on stating that rule 47 of the L.C.Rs. falls under "Non-Statutory" and this rule can be relaxed in a proper case and concludes that his is the proper case for the relaxation of the rule 47 in view of his personal experience of conduct of cases, the quantity of work, the variety of the nature of work, and the opinions re: his work and experience expressed by the eminent counsel of the High Court and also by the learned Government Pleader.

3. The G.P., High Court, states that the rule re: the age limit may be relaxed in favour of all the candidates that are over 27.

4. No doubt the Law Officers (Conditions of Service) Rules are statutory rules and L.O.Rules which regulate the procedure for the conduct of the legal affairs of Government are non-statutory rules. The age limit prescribed in rule # 47 of the latter rules cannot be relaxed in favour of all the candidates that are over 27. If the above rule is relaxed in each and every case then the rule will be meaningless and redundant.

5. It is however pointed that there is a provision for relaxation of age limit in the B.C.S.Classification and Recruitment Rules which are statutory rules (pl.see note 1 to rule 7 of the Rules). Under this note age limit in the case of candidates for the post of Hon.Asstt. to D.C.P. who belong to the educationally backward communities can be relaxed, but as Mr.Kotval belonged to an advanced class and was over 35 years of age, his case was not considered to be deserving the relaxation of the rule re: age limit.

But B.C.S.Rules will not apply to Govt. Pleaders or their Asstts.

Id. N.K.D.

Id. J.D.
5/8.

Supdt.

1. In the past the posts of the Hon.Asstts. to G.Ps. were considered to be qualifying posts under the High Court Rules for Sub-Judgships. The age limit accordingly came in operation for those appointments.

2. These are no longer qualifying posts in existence now and the recruitment

to

MRP.
23/5/56.

to Sub-Judges takes place from among the Members of the Bar. The ~~appointment~~ appointments of Hony. Asstts. to G.Ps. are however continued under almost the same old conditions. The aim appears to be to continue to give to the mem___s of the Bar who are aspirants to the Sug-Judgeships, an opportunity of receiving some training for the judicial office. As also now there is age limit for being recruited to the Sub-Judgships, corresponding age limit for the posts of Hony. Asstts. will evidently be necessary.

3. The present Rules however do not clearly indicate the aim for which these appointments are made; but from the age limit laid down in Rule 47, L.C.Rules viz., 21 to 27 years, it appears clear that it conforms with the age limit laid down for the Recruitment of Sub-Judges namely 21 to 30 years with 3 years previous practice.

Rule 36 Recruitment Rules (pp. 34-35)

Sd.J.V.Braga.
7/8

A.L.R.

The position seems to be as stated by the Supdt. The post of Hony. Asstt. to G.P., H.C., will still confer an advantage on its incumbent for being selected as SubrJudge, though it is no longer an indispensable qualification. Hony.Asstts. to G.P. in the High Court have often become Sub-Judges

e.g.

e.g. Mr. D.R.Ugrankar. Hemy.Asstt's posts are regarded both as assistance to the G.P. and as training ground for some other appointment. See Rule 47 (4)and (5), and also (3). If so, the age limit in Rule 47 is relevant as based on the age-limit in Rule 7 of B.C.S.(C.& A.) Rules, and hence it should ~~ke~~ not be relaxed. It would not be proper to agree to the G.P.H.C's proposal that we should frustrate the age limit rule by relaxing it in all cases. Rules though non-statutory are meant for observance administratively.

Id. N.K.D.
8/8

D.S.

I agree with A.L.R.
The provision regarding age limit contained in rule 47 is very rarely relaxed.

Id. H.K.C.
9/8

Secy. I agree.

Id. P.N.M.
11/8.

Mr. Kotval may be informed that the Secy. L.D. regrets that he cannot relax the age limit in Mr.Kotval's favour.

Sd. P.N.Moos
11/8.

MRP
23/5/56.

No.7235.

Legal Department.

Bombay Castle, 16th August 1941.

From

The Deputy Secretary to the Government of Bombay.

To

A.G.Kotwal, Esq., LL.B.,
Advocate, Appellate Side,
3, Mathew Road, Bombay No.4

Subject:- Application for the post of Hon. Assistant to Government Pleader, High Court, Bombay.

Sir,

With reference to your letter dated the 24th July 1941 addressed to Secretary to Government, Legal Department, on the above subject, I am directed to state that the Secretary to Government, Legal Department, regrets that he cannot relax the age limit in your favour.

I have the honour to be,

Sir,

Your most obedient servant,

Sd. N.K.Dravid, 14/8
for Secretary to Government.

No.7236.

Legal Department,
Bombay Castle, 16th August 1941.

Copy forwarded with compliments to the Government Pleader, High Court with reference to his endorsement No.1688 dated the 24th July 1941.

Sd. N.K.Dravid
14/8
For Deputy Secretary to Government.

MRP.
23/5/56.